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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/532,346	04/22/2005	Elena Costa	1454.1610	3925

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EXAMINER	
HOLLIDAY, JAIME MICHELE	
ART UNIT	**PAPER NUMBER**
2617	

MAIL DATE	DELIVERY MODE
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/532,346	Applicant(s) COSTA ET AL.	
	Examiner Jaime M. Holliday	Art Unit 2617	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 31 January 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☐ The period for reply expires _____months from the mailing date of the final rejection.
   b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: _____.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

JOSEPH FEILD
SUPERVISORY PATENT EXAMINER

Continuation of 11. does NOT place the application in condition for allowance because: Applicants basically argue that rejections of the previous Office Action fail to show how and which one of the teachings of the prior art is asserted to render obvious the claim recitations, . and allegedly the connection between the prior art and the claimed invention is missing. Further, Applicants argue that the teachings of Guimont and Ma lead to another invention and not the claim limitations, in particular, the two different manners of allocating sub-carriers to radio cells. Also, Applicants argue that Ma does not teach or suggest allocation to radio cells. With regards to Applicants arguments, Examiner respectfully disagrees. Guimont et al. clearly show and disclose that a frequency plan revision proposal is evaluated to determine whether it is compatible with the current cell configuration by insuring that sufficient frequencies having appropriate operating modes are available for assignment to meet the traffic and control channel requirements and availability of the included cell transceivers (method for managing radio resources of a frequency band having sub-carriers in a cellular radio communications system). Available frequencies in the cellular frequency band (frequency band) are divided in accordance with the frequency plan (allocated) into frequency groups 14 (sub-carriers), with the frequency groups assigned amongst the cells 10 of each cluster 12 (sub-set of cells; fig.1) such that the radio frequencies of the cellular band are reused in each cluster (making sub-carriers available to radio cells; assigning each of the sub-carriers only to a subset of the radio cells), (abstract, fig. 1, col. 4 lines 19-40). However, Guimont et al. fail to specifically disclose that the sub-carriers are allocated during different time periods. In the same field of endeavor, Ma et al. clearly show and disclose a method of communicating over a shared OFDM band (frequency band) (paragraph 86). FIG. 2 shows an example of time-frequency resource allocation for two different OFDM modes referred to as Mode-1 and Mode-2, which changes over time (Therefore, the modes are representative of periods of time) (first time period; second time period). For symbol periods ti through ti+9, a first allocation is shown with the first frequency band 51 assigned to Mode-1 traffic and the second frequency band 53 assigned to Mode-2 traffic. During symbol duration ti+10, ti+11, the entire OFDM band 50 is dedicated to Mode-2 traffic. During symbol duration ti+10 and onward, the first frequency band 51 is assigned to Mode-2 traffic while the second frequency band 53 is assigned to Mode-1 traffic, (to make the sub-carriers of the at least one frequency band temporarily available during a first time period, and allocating the radio resources to the radio cells during a second time period) (paragraphs 124, 125). The "two manners" that the Applicants argued to be undisclosed by the prior art, is understood to be "temporarily assigned" and "assigning each of the sub-carriers only to a subset of the radio cells," is clearly disclosed by Guimont et al., however, this does not occur during different time periods. Ma et al. is therefore incorporated to overcome this limitation. Applicants argue that Ma et al. does not teach or suggest that the allocation is to radio cells, but as discussed above, Guimont et al. teaches frequency allocation to radio cells. In response to applicant's argument that that the combination of Guimont and Ma would lead to another method, the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See Ex parte Obiaya, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985). In response to applicant's argument that "efficiently creating a frequency plan" is the objective of Guimont which is not related to the current application, and is therefore not a viable reason to combine the references, examiner respectfully disagrees, because the current application and the prior art of record teach frequency allocation. Further "the reason or motivation to modify the reference may often suggest what the inventor has done, but for a different purpose or to solve a different problem. It is not necessary that the prior art suggest the combination to achieve the same advantage or result discovered by applicant. See, e.g., In re Kahn, 441 F.3d 977, 987, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006) (motivation question arises in the context of the general problem confronting the inventor rather than the specific problem solved by the invention); Cross Med. Prods., Inc. v. Medtronic Sofamor Danek, Inc., 424 F.3d 1293, 1323, 76 USPQ2d 1662, 1685 (Fed. Cir. 2005) ("One of ordinary skill in the art need not see the identical problem addressed in a prior art reference to be motivated to apply its teachings.")" [MPEP 2144 IV RATIONALE DIFFERENT FROM APPLICANT'S IS PERMISSIBLE] Therefore, Examiner maintains previous rejections.